

## Cultural diversity and the rights of minorities in Europe

Patrícia Jerónimo \*

**Abstract:** Cultural diversity is a prominent feature of our globalised world and has been the object of much celebration over the past decade. However, intra-State diversity is perceived by many – in Europe, as in other Western countries – as a problem, a source of social divisions and tensions, a challenge to the unity and authority of the legal system, and a liability to the territorial integrity of the State. European countries have responded in many different ways to the “problem” of cultural diversity, according to their history and specific social makeup, but their responses can be summed up into two main approaches – *assimilationism* and *multiculturalism*. While multiculturalism has been blamed for many of the bad things that have happened in Europe in the last decade, it is still the best answer to the question of how democratic States, founded on the rule of law and respect for human rights, are to deal with the cultural diversity of their societies. One of its main aspects – the protection of cultural minorities – is, however, still a work in progress throughout Europe.

### 1. Cultural diversity as an asset and a problem

Cultural diversity is a prominent feature of our globalised world and has been the object of much celebration over the past decade, in a clear effort to build respect among different peoples and overcome the threat of a clash of civilizations. The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

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\* Law Professor at the Law School of the University of Minho, Braga, Portugal. The following is the text of the presentation given at the International Colloquium *Human Rights and Criminal Justice: A perspective of Western and South East Asia*, Burapha University, 20 November 2012.

summarized the general mood when it stated that “cultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all”, and that “flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, [cultural diversity] is indispensable for peace and security at the local, national and international levels”<sup>1</sup>.

Culture is taken here in its broadest meaning as “a set of distinctive spiritual, material, intellectual and emotional features of society or a social group, [which] encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs”<sup>2</sup>. Thanks to globalization, differences in value systems, traditions and beliefs are increasingly more apparent across the world, not only when we compare different States, but also when we consider the composition of each single State. The myth of the unitary nation-State has been duly debunked and the European States, which invented it and still ache from its demise, are faced with the task of coping with the cultural diversity in their midst.

As much as we are told to value and foster cultural diversity, the fact remains that intra-State diversity is perceived by many – in Europe, as in other Western countries – as a problem, a source of social divisions and tensions, a challenge to the unity and authority of the legal system, and a liability to the territorial integrity of the State. Not exactly a new problem, since cultural diversity already existed at the time of the formation of the modern territorial States in the XIX century, but a problem which has been exacerbated by the waves of mass immigration that have been a constant in Europe since the end of the Second World War. In recent years, in particular, the good (cultural) integration of non-European immigrants in host societies has been high on the political agenda of European States within the framework of the European Union<sup>3</sup>.

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<sup>1</sup> The Convention entered into force on 18 March 2007. The text is available here [http://portal.unesco.org/en/ev.php-URL\\_ID=31038&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html) [03.02.2013].

<sup>2</sup> Definition recommended by the 2001 UNESCO Universal Declaration on Cultural Diversity. The text of the Declaration is available here [http://portal.unesco.org/en/ev.php-URL\\_ID=13179&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html) [03.02.2013].

<sup>3</sup> Consider, for instance, the The Hague Programme: Strengthening Freedom, Security and Justice in the European Union (2004), and the Stockholm Programme: An Open and Secure Europe Serving and Protecting Citizens (2010).

## 2. Assimilationism *versus* multiculturalism

European countries have responded in many different ways to the “problem” of cultural diversity, according to their history and specific social makeup, but their responses can be summed up into two main approaches – *assimilationism* and *multiculturalism*. An assimilationist approach, favored by France for example, denies any political or legal relevance to cultural diversity and demands from all the members of the polity that they embrace the common values of the nation and leave any cultural idiosyncrasies to the privacy of their homes. A multiculturalist approach, on the contrary, acknowledges the importance of cultural diversity and the right of individuals and groups to live according to their own traditions and beliefs. Multiculturalist policies may require granting special rights to members of religious, linguistic or ethnic minorities (e.g., *Sikh*’s right to wear a turban instead of a helmet when riding a motorbike in the United Kingdom; linguistic rights for the German speaking community in the Italian province of Bolzano) and/or ensuring a measure of administrative and jurisdictional autonomy to some of its minority groups (e.g., demarcation of traditional Sami areas, in Norway, Finland, and Sweden, where the Sami people have exclusive rights to reindeer husbandry; *Shari’a* courts for private law disputes among Muslims in the United Kingdom). Other multiculturalist policies may include, for example, the restructuring of the school and university *curricula* in order to reflect the cultural diversity of the country and to foster mutual respect between cultures, as well as the establishment of *quota* for securing the political representation of minority cultures.

Even though most European countries refrain from openly endorsing multiculturalism as a model to cope with cultural diversity, and prefer other designations, such as *interculturalism* (Portugal) or *pillar system* (The Netherlands), the practice of multiculturalist policies has been widespread in Europe in the past decades and very few countries purport to adopt an assimilationist policy nowadays. The Council of Europe Framework Convention for the Protection of National Minorities, of 1995, which was signed by all European countries except for France, Turkey, Andorra and Monaco, expressly

demands from the signatory States that they refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will<sup>4</sup>.

Under the Framework Convention, States must promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, tradition and cultural heritage. In particular, States must recognize that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing, and the right to learn that minority language; as well as the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them<sup>5</sup>.

It would seem, therefore, that multiculturalism has won, but the fears brought by terrorist threats and the perceived risk of mounting *ghettoization* of immigrant communities has led several European political leaders, such as Angela Merkel and David Cameron, to announce that multiculturalism has failed.

### 3. Blaming multiculturalism

Multiculturalism has been blamed for many of the bad things that have happened in Europe in the last decade, but what many of its opponents seem to be criticizing is the existence of cultural diversity as such. Multiculturalism is often used as a synonym with cultural diversity, which is bound to confuse matters. Cultural diversity is an undisputed fact. It can be considered to be a good thing (as with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, cited above) or a problem (as with the calls for “Denmark for the Danish”, by the Danish People’s Party in recent campaigns<sup>6</sup>), but the existence or non-existence of cultural diversity within State borders is not a matter of opinion. What is a matter of opinion, and a highly contested one

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<sup>4</sup> Article 5, § 2. The text of the Framework Convention is available here [http://www.coe.int/t/dghl/monitoring/minorities/1\\_AtGlance/PDF\\_H\(1995\)010\\_FCNM\\_ExplanReport\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H(1995)010_FCNM_ExplanReport_en.pdf) [05.02.2013].

<sup>5</sup> Articles 5, § 1, 10, 11, and 14 of the Framework Convention for the Protection of National Minorities.

<sup>6</sup> See Will KYMLICKA – *Multiculturalism: Success, Failure, and the Future*, Washington DC, Migration Policy Institute, 2012, p. 3.

at that, is what to do with cultural diversity. Are States to protect diversity, and by which means? Or are States to confine diversity to the private sphere and demand assimilation to State values in the public realm? Out of the question is, for its monstrous implications, the possibility of simply eradicating diversity by expelling all individuals who would not conform to the national identity of a State, whatever that might be determined to be.

Our understanding is that multiculturalism, in spite of its shortcomings, is the best answer to the question of how democratic States, founded on the rule of law and respect for human rights, are to deal with the cultural diversity of their societies, while keeping their societies cohesive around the same fundamental values. Contrary to common assumptions, multiculturalism is part of the human rights movement and of the new ideology of equality of races and peoples that emerged in the aftermath of Second World War. As Will Kymlicka points out, three waves of political movements arose out of that new ideology: a first wave of struggle for self-determination and decolonization (1948 to 1965), a second wave of struggle against racial segregation and discrimination (1955/1965), and a third wave of struggle for multiculturalism and minority rights (late 1960s onwards)<sup>7</sup>.

Multiculturalism draws attention to the need to accommodate and acknowledge the different identities that coexist in contemporary democratic societies in order to be consistent with the fundamental principles of respect for human dignity and of equality and non discrimination of all human beings. Given the importance of culture in conforming individual identities and behavior, it is impossible to protect the dignity of human beings without recognizing them the right to live according to the values which they believe to be true and to their understanding of what is a good life. Persons belonging to national or ethnic, religious and linguistic minorities should have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination<sup>8</sup>. But they should also be entitled to take active part and to be recognized as equal participants in the political

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<sup>7</sup> See Will KYMLICKA – *Multiculturalism: Success, Failure, and the Future*, *op. cit.*, p. 6.

<sup>8</sup> That much has already been recognized, even though with limited legal effects, by article 27.<sup>o</sup> of the International Covenant on Civil and Political Rights, of 1966, available here <http://www2.ohchr.org/english/law/ccpr.htm> [06.02.2013], and by article 2, § 1, of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, of 1992, available here <http://www2.ohchr.org/english/law/minorities.htm> [06.02.2013].

life of the community where they live, and to be assisted by the State in the preservation and development of their cultural traditions.

States cannot simply claim to be neutral and to treat all individuals as equal, as an excuse to ignore cultural diversity and to deny those rights. The liberal *credo* in State neutrality was never more than an illusion. Under the cover of neutrality, liberal States are always culturally biased in favor of the majority culture. As noted by Jürgen Habermas, “[o]ften the regulation of culturally sensitive matters, such as the official language, the public school curriculum, the status of churches and religious communities, and the norms of criminal law [is] merely a reflection of the ethical-political self-understanding of a majority culture that has achieved dominance for contingent, historical reasons”<sup>9</sup>. The recognition of the right to be different and of the State’s duty to take due account of the specific conditions of the persons belonging to minority groups does not mean a departure from the fundamental principles of individual autonomy and equality, but is, on the contrary, their logical consequence. The struggle for the right to be different and to be recognized as a full member of the political community is not detrimental to, but complementary of, the struggle for equality and against discrimination.

Of course, multiculturalism is not without practical problems. It is understandably difficult for States to strike the correct balance between the respect for individual (and collective) cultural identity, on the one hand, and the need for societal cohesion around a set of commonly shared values and the interest in securing the integrity of the legal system, on the other hand. It is also not always clear how the State should proceed in cases of conflict between an individual and the minority group to which that person belongs. While it is beyond doubt that States cannot discard cultural arguments as irrelevant or refuse to grant minority rights on the basis that they are contrary to the principle of equality, it is also clear that not all behavior can be deemed eligible for a “cultural defense”<sup>10</sup> and that not all claims at protection of cultural identity can be equally

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<sup>9</sup> See Jürgen HABERMAS – *Die Einbeziehung des anderen. Studien zur politischen Theorie*, Frankfurt am Main, Suhrkamp Verlag, 1996, English translation by Ciaran Cronin, *The Inclusion of the Other. Studies in Political Theory*, Cambridge, The MIT Press, 1998, pp. 144-145.

<sup>10</sup> See, for instance, Alison Dundes RENTELN – *The Use and Abuse of the Cultural Defense*, in Marie-Claire Foblets and Alison Dundes Rentels (eds.), *Multicultural Jurisprudence. Comparative Perspectives on the Cultural Defense*, Oxford, Hart Publishing, 2009, pp. 61-68.

answered by the State. To complicate matters, it is increasingly difficult to identify who are the members of a particular culture, given the mobility of individuals between cultural groups and the growing numbers of hybrid cultural identities<sup>11</sup>. Similar difficulties arise when we try to identify the cultural traits that distinguish a particular culture and when we are faced with the question of how to value competing claims to cultural authenticity within one cultural tradition. The same is true for the determination of which groups constitute minorities worth protecting...

#### 4. Minorities and minority protection in Europe

Although there has been a prolific academic debate on minority rights since the late 1960s, and many political initiatives to translate those debates into a normative framework for the protection of minorities, there is yet no academic or political consensus on the concept of “minority”. Neither article 27 of the International Covenant on Civil and Political Rights (ICCPR) nor the Framework Convention for the Protection of National Minorities offer a definition. In the absence of such an authoritative definition, States claim the ultimate word on whether there are minorities in their territories<sup>12</sup> and tend to adopt very narrow definitions of “minority”, thereby severely hindering the already bleak protection provided by international legal instruments to minority groups and their members. The “new minorities”, *i.e.* minority groups formed by immigrant communities, are usually excluded from the scope of minority protection policies, with the argument that only citizens are to be considered as members of a minority. Such a restrictive reading of the concept of minority is not endorsed by the United Nations Office for the High

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<sup>11</sup> See Dominic MCGOLDRICK – *Multiculturalism and Its Discontents*, in “Human Rights Law Review”, vol. 5, no. 1, 2005, p. 31.

<sup>12</sup> As shown by the declarations contained in the instruments of ratification of the ICCPR [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) [06.02.2013], and of the Framework Convention for the Protection of National Minorities, <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=8&DF=06/02/2013&CL=ENG&VL=1> [06.02.2013].

Commissioner of Human Rights<sup>13</sup>, neither by the Advisory Committee on the Framework Convention for the Protection of National Minorities<sup>14</sup>. None of these bodies, however, have put forward a working definition of minority, which could help overcome the current conceptual and normative deadlock.

So, while there are many reports being issued regularly on the protection of minorities in Europe by several agencies at national and regional levels<sup>15</sup>, the fact remains that the legal protection of minorities is still very much a work in progress. Besides the non binding recommendations issued by the OSCE, the European standard of minority protection has been developed almost entirely under the aegis of the Council of Europe, which adopted the European Charter for Regional or Minority Languages, in 1992<sup>16</sup>, and the Framework Convention for the Protection of National Minorities, three years later. Furthermore, the European Court of Human Rights (ECtHR) has been able to extend the protection of the European Convention on Human Rights (ECHR) to the special needs of some minority groups (the Roma, in particular), in spite of the fact the ECHR does not

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<sup>13</sup> General Comment no. 23: The rights of minorities (Art. 27), of 8 April 1994, clarifies that the terms used in article 27 indicate that the individuals designed to be protected need not be citizens of the State party. "A State party may not, therefore, restrict the rights under article 27 to its citizens alone. [The] existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria". The General Comment no. 23 does not elaborate however on what such objective criteria should be. The text of the General Comment is available here <http://www.unhchr.ch/tbs/doc.nsf/0/fb7fb12c2fb8bb21c12563ed004df111> [06.02.2013].

<sup>14</sup> When commenting on the reports submitted by the States Parties to the Framework Convention, the Advisory Committee has adopted a flexible and inclusive approach. It concedes that some provisions of the Framework Convention only make sense for "old minorities", but argues that the protection of "new minorities" is entirely consistent with other provisions and that a case-by-case analysis is required. See Rainer HOFMANN – *The Framework Convention for the Protection of National Minorities: An Introduction*, in Marc Weller (ed.), *The Rights of Minorities. A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford, Oxford University Press, 2005, pp. 16-18.

<sup>15</sup> Consider the reports issued by the Organization for Security and Co-Operation in Europe (OSCE), which has its own High Commissioner for National Minorities – <http://www.osce.org/hcnm> –, and by the European Union Agency for Fundamental Rights – <http://fra.europa.eu/en> –, which cover topics such as linguistic minorities, Roma, racism and related intolerances.

<sup>16</sup> The text of the Charter is available here <http://conventions.coe.int/treaty/en/Treaties/Html/148.htm> [06.02.2013].



establish a minority protection provision, but merely includes the association with a national minority among the forbidden grounds for discrimination in article 14<sup>17</sup>.

In the meantime, there has been much talk about the role that the European Union can play in the definition and implementation of a European standard of minority protection, given the outstanding minority issues brought to the Union's political landscape by the 2004 eastern enlargement and the growing commitment of the European Union to the protection of human rights, attested by the adoption of the Charter of Fundamental Rights of the European Union<sup>18</sup>. The idea of providing the European Union with minority protection mechanisms is not new. Already in the 1980s, two members of the European Parliament put forward plans for the adoption of a Community charter of minority rights<sup>19</sup>, an aim that has been sponsored by the European Parliament ever since, in several resolutions on minority languages and cultural and ethnic minorities<sup>20</sup>. The Member States, however, have been very reluctant to accept being bound by legal provisions on minority protection and the Treaties were completely silent on the issue until the Treaty of Lisbon included, among the values on which the Union is founded, the respect for "human rights, including the rights of persons belonging to minorities"<sup>21</sup>.

With the 2004 eastern enlargement, it became apparent that the European Union was using a double standard when it came to minority protection issues, since it was

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<sup>17</sup> See Geoff GILBERT – "The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights", in *Human Rights Quarterly*, 24, 2002, pp. 736-780.

<sup>18</sup> The Charter was solemnly proclaimed, in December 2000, and became legally binding with the Treaty of Lisbon, which was signed on 13 December 2007 and entered into force on 1 December 2009. The text of the Charter is available here [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) [06.02.2013].

<sup>19</sup> See Gabriel N. TOGGENBURG – "Minority protection in a supranational context: Limits and opportunities", in Gabriel N. Toggenburg (ed.), *Minority Protection and the Enlarged European Union: The Way Forward*, Budapest, Open Society Institute, 2004, p. 5.

<sup>20</sup> Consider, for instance, the Resolution of 16 October 1981 on a Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities (JO C 287, of 9.11.1981); the Resolution of 11 February 1983 on Measures in Favour of Minority Languages and Cultures (JO C 68, of 14.3.1983); the Resolution of 9 February 1994 on Linguistic Minorities in the European Community (JO C 61, of 28.2.1994); the Resolution of 13 December 2001 on Regional and Lesser-Used European Languages (JO C 177 E, of 25.7.2002); and Resolution of 8 June 2005 on the Protection of Minorities and Anti-discrimination Policies in an Enlarged Europe (JO C 124 E, of 25.5.2006).

<sup>21</sup> Article 2 of the Treaty on European Union. The text of the Treaty is available here <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF> [06.02.2013].

extremely demanding *vis-à-vis* candidate States, when it had always considered that what the (old) Member States did with their minorities was none of the EU's business<sup>22</sup>. This infamous duplicity was severely criticized in the literature and led to the adoption, by a group of prominent academics, of The Bolzano/Bozen Declaration on the Protection of Minorities in the Enlarged Union, in January 2004, which called upon the Union to drop the double standard and to play an active role in the protection of European minorities, in addition to the Member States, the Council of Europe and the OSCE<sup>23</sup>.

While it is clear that the European Union lacks an autonomous normative framework for the protection of persons belonging to minorities<sup>24</sup>, it has been argued that article 22 of the Charter of Fundamental Rights – which reads “[t]he Union shall respect cultural, religious and linguistic diversity” – establishes a minority protection clause<sup>25</sup>. Such a reading is contradicted, however, by the *travaux préparatoires* of the Charter, which show that several proposals to include an autonomous provision on minority rights were put forward and eventually dropped due to French opposition<sup>26</sup>. The explanatory note to article 22, drafted in 2000, does not refer to any international legal instrument on the protection of minorities, and the updated version of the explanatory note, from 2007, does

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<sup>22</sup> See Bruno DE WITTE – “Politics versus Law in the EU's Approach to Ethnic Minorities”, in Jan Zielonka (ed.), *Europe Unbound*, New York, Routledge, 2002, pp. 137-159; IDEM – “The Constitutional Resources for an EU Minority Protection Policy”, in Gabriel N. Toggenburg (ed.), *Minority Protection and the Enlarged European Union: The Way Forward*, Budapest, Open Society Institute, 2004, pp. 109 and 112-113.

<sup>23</sup> The text of the Declaration is available here <http://www.cilevics.eu/minelres/publicat/BOLZANO-BOZEN%20DECLARATION%20030604.pdf> [06.02.2013].

<sup>24</sup> The European Commission reports during the 2004 enlargement process evidenced that the EU lacked an autonomous and coherent normative framework in the field of minority protection, mainly for its *ad hoc* response and its frequent recourse to the standards set by the Council of Europe and the OSCE. See Gwendolyn SASSE – “Minority Rights and EU Enlargement: Normative Overstretch or Effective Conditionality?”, in Gabriel N. Toggenburg (ed.), *Minority Protection and the Enlarged European Union: The Way Forward*, Budapest, Open Society Institute, 2004, pp. 67-71.

<sup>25</sup> That was the opinion expressed by the EU Network of Independent Experts in Fundamental Rights in their report on the situation of fundamental rights in the European Union and its Member States in 2002. The text of the report is available here <http://www.statewatch.org/news/2003/apr/CFR-CDF.2002.report.en.pdf> [06.02.2013].

<sup>26</sup> See Guido SCHWELLNUS – “‘Much ado about nothing?’ Minority protection and the EU Charter of Fundamental Rights”, in *Constitutionalism Web-Papers*, ConWEB no. 5/2001, available here <http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/ConWEBFiles/Filetoupload.38355.en.pdf> [20.02.2012]; Wojciech SADURSKI – “Charter and Enlargement”, in *European Law Journal*, vol. 8, no. 3, 2002, pp. 347-348.

not even mention article 2 of the Treaty on European Union, which includes the rights of persons belonging to minorities among the values on which the Union is founded. Furthermore, this explicit mention to the rights of persons belonging to minorities was not followed by the attribution to the Union of any specific competence to legislate on these matters<sup>27</sup>. As pointed out by Gabriel Toggenburg, it is highly unlikely that the Union's commitment to diversity may be so easily translated into a founding provision for the protection of minorities throughout Europe<sup>28</sup>. After all, it has been precisely in the name of diversity that Member States have opposed the Union's harmonizing interference in matters such as immigrant integration policies, minority protection and multiculturalism<sup>29</sup>.

This does not mean that the Union cannot come to establish its own minority protection system in the future, nor that article 22 of the Charter in conjunction with article 2 of the Treaty on European Union may not serve as normative foundation for such a system. It is just that, given the circumstances that surrounded the drafting of article 22 and the vagueness of its wording, article 22 is much more a reflection of the current lack of political will among Member States to move forward to a minority protection system than a promise of future developments.

It can also be argued that the Union does not need to adopt its own system of minority protection, since there are already European standards in place – the Framework Convention and other Council of Europe instruments, including the case law of the ECtHR, and the recommendations of the OSCE. Most likely, any European Union standards would only duplicate the norms and protection mechanisms already available<sup>30</sup>. To be otherwise,

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<sup>27</sup> See Gabriel N. TOGGENBURG – “Who is managing ethnic and cultural diversity in the European condominium? The moments of entry, integration and preservation”, in *Journal of Common Market Studies*, vol. 43, no. 4, 2005, p. 730.

<sup>28</sup> See Gabriel N. TOGGENBURG – “The debate on European values and the case of cultural diversity”, in *European Diversity and Autonomy Papers*, 1/2004, p. 16.

<sup>29</sup> Let us not forget that one of the main supporters of the “cultural diversity” argument is France, which is adamant about the non existence of minorities in its territory. See Bruno DE WITTE – “The Constitutional Resources for an EU Minority Protection Policy”, *op. cit.*, p. 115.

<sup>30</sup> See Bruno DE WITTE – “The Constitutional Resources for an EU Minority Protection Policy”, *op. cit.*, p. 111. Some authors have argued for the EU's accession to the Framework Convention for the Protection of National Minorities. See, for instance, Gulara GULIYEVA – “Joining Forces or Reinventing the Wheel? The EU and the Protection of National Minorities”, in *International Journal on Minority and Group Rights*, 17, 2010, pp. 287-305. However, this is a very unlikely outcome, in view of the predictable opposition of the States which have not ratified the Framework Convention and of the

the Union would have to have the power to establish its own definition of minority and to apply said definition to the groups living in the territories of the Member States, granting them a “European minority status” with corresponding rights, independent of their recognition as minorities in their respective Member State. Something which in the current stage of the European construction is highly unlikely, if not impossible<sup>31</sup>.

However, it should be pointed out that the supranational nature of the European integration process already benefits, although indirectly, the persons belonging to minorities, through the Union’s action against discrimination, through the recognition of mobility and linguistic rights to Union citizens, and through the financial support granted to many projects in the fields of education, culture, linguistic diversity and regional development<sup>32</sup>. The Court of Justice of the European Union has contributed to this indirect protection by holding that the freedom of movement and establishment require a special protection to the linguistic rights of EU citizens and that the Member States cannot impose a uniform spelling for a person’s name or surname.

## 5. Final remarks: What is Portugal’s stance on the protection of minorities?

Portugal has old borders and its population was, until very recently, considered to be ethnically unitary, so the problem of protecting cultural, linguistic or religious minorities is a relatively new one and it is very much downplayed by the political leaders, who seem to believe in the Portuguese special ability to accommodate cultural differences and to engage in intercultural dialogue. As a member of the Council of Europe, Portugal ratified

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fact that several provisions in the Framework Convention are inapplicable to the Union. See Gabriel N. TOGGENBURG – “Minority protection in a supranational context: Limits and opportunities”, *op. cit.*, p. 15.

<sup>31</sup> See Gabriel N. TOGGENBURG – “Minority protection in a supranational context: Limits and opportunities”, *op. cit.*, pp. 4 and 9-13.

<sup>32</sup> See Gabriel N. TOGGENBURG – “Minority protection in a supranational context: Limits and opportunities”, *op. cit.*, pp. 18-20; IDEM – “A rough orientation through a delicate relationship: The European Union’s endeavours for (its) minorities”, in *European Integration online Papers*, vol. 4, no. 16, 2000, pp. 9-14, available here <http://eiop.or.at/eiop/texte/2000-016a.htm> [05.12.2010]; Bruno DE WITTE – “The Constitutional Resources for an EU Minority Protection Policy”, *op. cit.*, pp. 116-122.

the Framework Convention for the Protection of National Minorities, in 2001<sup>33</sup>, but when it was called upon to report to the Advisory Committee on its progress towards the implementation of the Framework Convention, the Portuguese Government argued that it had ratified the Framework Convention only out of political solidarity with the other Council of Europe Member States, since it does not have national minorities in its territory.

The Portuguese Government acknowledged the existence in Portugal of “social minorities” (*minorias sociais de facto*), including ethnic, religious and linguistic minorities, but argued that these did not fall under the scope of the Framework Convention. The Advisory Committee noted in reply that the Framework Convention is a pragmatic tool, to be implemented in very diverse legal, political and practical situations, and that therefore the non-recognition of the concept of national minorities should not prevent the Portuguese authorities from considering extending the protection of the Framework Convention to persons belonging to ethnic, linguistic and cultural minorities. However, in its second report, the Portuguese Government reiterated its understanding of national minorities as distinct from “social minorities” and added that it also did not include in the concept of national minorities the communities formed by immigration. In spite of claiming to have nothing to report, the Government nevertheless listed in its communications with the Advisory Committee a number of policies directed at the protection of the said “social minorities”, in particular those aimed at the Portuguese Roma (*comunidades ciganas*)<sup>34</sup>.

Portugal has adopted several policies directed at the inclusion of Roma communities in the past two decades, but none of these policies have translated into minority rights as such. The only minority to have been granted specific minority rights is a linguistic minority, the speakers of *Mirandês*, officially recognized in 1999. A curious fact, given that Portugal is one of the few Member States of the Council of Europe that has not yet ratified the European Charter for Regional or Minority Languages.

Under the Law no. 7/99, of 29 January 1999, the State recognizes the right to cultivate and promote the language of Miranda, as part of the cultural heritage, as a communication tool and as a form of strengthening the identity of the community of

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<sup>33</sup> Presidential Decree no. 33/2001, of 25 June 2001.

<sup>34</sup> The Portuguese reports and the opinions issued by the Advisory Committee on Portugal are available here [www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#Portugal](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Portugal) [22.04.2011].

Miranda, a small region in the northeast of the country. It recognizes the children's right to learn *Mirandês* and, to that effect, a general right to State's assistance in the scientific and pedagogical training of teachers of the culture and language of Miranda. Finally, it is also established that the public institutions with offices in Miranda do Douro may issue their documents accompanied by a version in *Mirandês*.

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